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U.S. Citizenship
and Immigration
Services

D2

FILE: WAC 02 170 50831 Office: CALIFORNIA SERVICE CENTER Date: **JAN 03 2005**

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a staffing agency. In order to employ the beneficiary as a financial controller, the petitioner endeavors to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on the basis that the petitioner had not established that it was in an employer-employee relationship with the beneficiary as defined at 8 C.F.R. § 214.2(h)(4)(ii). On appeal, counsel contends that the director's decision does not comport with the evidence of record, which, according to the counsel, establishes that the petitioner would be the beneficiary's employer.

As will be discussed below, the AAO agrees with counsel that the record established the requisite employer-employee relationship, but it also finds that the decision to deny the petition should be affirmed because the petitioner has not established that the proffered position is a specialty occupation. In reaching this decision, the AAO reviewed the entire record, including: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the matters submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B as annotated by counsel, and counsel's brief on appeal.

The evidence of record includes the following information that the AAO finds determinative of the employer-employee issue. The contract between the petitioner and Life Extension Insurance Services (LEIS) expressly states that the petitioner will supply its own employees to work for LEIS, and that these persons would remain employees of the petitioner and subject to its power to terminate them. Also, the petitioner's contracts with LEIS and with the beneficiary, as well as the job announcement for the proffered position, indicate that the beneficiary would be paying the wages of its employees when they worked at LEIS, as well as when they worked at the petitioner's office. This information does not support the director's finding that the petitioner was functioning merely as a recruiter for other employers. Accordingly, the finding that the petitioner is not an employer seeking the beneficiary's services is withdrawn. Likewise, also withdrawn is the director's subsidiary finding that the labor condition application was invalid because it was not filed for the intended area of employment.

The director (at page 2 of the decision) indicated that he found that the proffered position of financial controller is a specialty occupation. The AAO disagrees, and here exercises its discretion to affirm the denial of the petition on a ground not cited by the director but supported by the record of proceeding. The petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the director's finding the opposite is reversed. The appeal shall be dismissed, and the petition will be denied.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and

- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

CIS interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) explicitly recognizes that a genuine accountant position, the performance of which requires at least a baccalaureate or the equivalent in accounting, is a specialty occupation. Accordingly, the issue at this stage of the proceeding is whether the petitioner has established that it is proffering a genuine accountant/financial controller position.

The petitioner indicates that it would employ the beneficiary for a total of 25 hours at two different locations each workweek (ten hours per week at LEIS, and the remaining fifteen hours at the petitioner's firm).

The AAO has reviewed the complete body of information that the petitioner has presented about the proffered position and its duties, including the related information in: the Form I-129; the petitioner's contracts with LEIS and the beneficiary; the employment itinerary document addressed to the beneficiary; the accountant/financial controller job description document; the petitioner's letter of support that it filed with the Form I-129; and counsel's letter of reply to the RFE, as well as its appended documents.

The petitioner consistently described the proffered position and its duties in generalized terms which do not convey that the beneficiary's day-to-day duties would require the application of at least a bachelor's degree level of knowledge in accounting. The record's job description document, reprinted here, is representative of the vague and abstract nature of the job information:

Job Description

ACCOUNTANT/FINANCIAL CONTROLLER

- administer the collection, maintenance, reporting and presentation of various accounting information for the company
- develop solutions to various accounting problems
- assist our client in directing accounting functions to include establishing and maintaining accounting principles, practices, and procedures
- responsible for manufacturing job variance analysis, inventory analysis/audits, labor variance analysis, month-end close processing and variance reporting to our clients
- establish and maintain standard costs, and perform roll-ups and assist with obsolete/excess inventory analysis
- responsible for advising our client of the effects of business activities and on strategies for minimizing tax liability and ensuring compliance with periodic tax payments
- coordinate cash needs and usage and provide cash forecasting analysis
- supervise all invoicing, receipts, payment applications, and credit and collection functions
- responsible for general ledger accountant maintenance; overhead reporting and distribution; budget support and maintenance and payroll posting
- implement a system that will be available to other accountants at the conclusion of period of stay

Another example of the lack of concrete information about the specific matters upon which the beneficiary would work is the assertion in counsel's letter of reply to the RFE (at page 2) that the proffered duties include:

performing operational audits to review the economic and efficient use of resources, and to determine whether established operational goals and objectives are being met; performing special projects related to [the] company's business processes, systems, controls or operations as requested by the client; analyzing complicated accounting and budgetary issues including link-chain dollar value LIFO inventories; preparing assessment of internal control, substantive tests of transactions, account analysis, and review of internal procedures; and performing other financial analysis including CVA analysis, contribution margin analysis, [and] measurement of performance versus established financial objectives. . . .

The record does not elucidate the "accounting and budgetary issues" that counsel asserts to be "complicated." No meaningful details are provided about the "special projects" that would engage the beneficiary. There is no exposition of the accounting or other specialty-degree applications required for the internal control assessments, "substantive tests of transactions," "account analysis," and internal control assessments. The record provides no meaningful information about the business matters for which counsel pronounces a need for "link-chain dollar value LIFO inventories," "CVA analysis," and "contribution margin analysis." Technical terms, such as the three just quoted, and the petitioner-specific business matters upon which they would be applied, go unexplained.

The proposed duties are described in general terms that are generic to accounting-type positions in general. They convey no details about the actual, employer-specific matters that would be the subject of the beneficiary's work. Different employers could use such abstract terms to generally describe a variety of jobs that are substantially different in their actual performance requirements and in the level of accounting knowledge that they would actually require. Because the general terms that are used throughout the record do not convey the practical nature of this particular job that is proffered as an accountant/financial controller position, the AAO cannot determine the level of accounting knowledge required for its performance. The petitioner, therefore, has not provided CIS with sufficient information to determine that actual performance would require the application of accounting knowledge on a level that is associated with at least a baccalaureate degree or equivalent in accounting. The burden of proof in this proceeding rests solely with the petitioner (Section 291 of the Act, 8 U.S.C. § 1361), and the petitioner has not sustained that burden.

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties.

Here the decisive question is not whether the petitioner's accountant/financial controller position requires accounting knowledge - which it appears to - but rather whether this position is one that normally requires the level of accounting knowledge that is signified by at least a bachelor's degree, or its equivalent, in accounting.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations. Accordingly, the AAO consulted the most relevant sections of the 2004-2005 version of the *Handbook*, namely, those entitled "Financial Clerks," "Bookkeeping Accounting, and Auditing Clerks," and "Accountants and Auditors." These sections recognize that employers require at least a bachelor's degree in accounting for genuine accountant positions. However, the sections on the financial clerk occupation and its subset of bookkeeping, accounting, and auditing clerks indicate that there are *non-accountant* accounting positions which require some knowledge of accounting principles and practices, but less than the highly specialized knowledge associated with a baccalaureate degree or its equivalent in accounting.

The record's information about the proposed duties indicates that the position involves accounting principles, but the evidence is too generalized and abstract to convey that the position is a genuine accountant position, or any other position that normally requires at least a bachelor's degree, or its equivalent, in a specific specialty.

The evidence of record does not establish that the proffered position would require a level of accounting knowledge above that required by financial clerks – which is less than a bachelor's degree or its equivalent – or junior accountants – which is also less than a bachelor's degree or its equivalent, as indicated by this excerpt from page 71 of the 2004-2005 *Handbook*:

Many graduates of junior colleges and business and correspondence schools, as well as bookkeepers and accounting clerks who meet the education and experience requirements set by their employers, can obtain junior accounting positions and advance to positions with more responsibilities by demonstrating their accounting skills on the job.

It is also noted that the petitioner has stated that a bachelor's degree in business administration or commerce would be acceptable for the position. See counsel's letter of reply to the RFE, at page 3; the job announcement document, at paragraph 2; and the petitioner's February 14, 2002 letter of support, at page 2. This is persuasive evidence that the proffered position is not a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or liberal arts, without further specification, does not establish the position as a specialty occupation. See *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

Because the evidence of record does not establish that the proffered position is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

Also, the petitioner has not satisfied either of the alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first alternative prong assigns specialty occupation status to a proffered position if it has a requirement for at least a bachelor's degree in a specific specialty, and if that requirement is common to the industry in positions which are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by CIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

As discussed above, the petitioner has not established that its proffered position is a genuine accountant position or any other type for which the *Handbook* reports an industry-wide requirement for a bachelor's degree in a specific specialty.

The AAO discounted the Certification letter from Career Advantage, Inc. (CAI) and its information about CAI's accountant position. Neither this letter nor any other evidence in the record establishes how the specific matters addressed by the CAI accountant position compares with specific requirements of the proffered position. Accordingly, the petitioner has not established that the CAI position is parallel to the proffered position. Furthermore, the CAI document does not aver that CAI has an established practice of recruiting and hiring only persons with a bachelor's degree or the equivalent in accounting, does not provide an adequate factual basis for its conclusions about degree requirements, and bears no authority to speak for the entire industry.

Finally, the single job vacancy announcement that the petitioner provided from another firm has no probative value. The announcement was issued by an employer outside the petitioner's industry, and the vagueness in it and the petitioner's job descriptions make a meaningful comparison impossible. Furthermore, one employment advertisement is not sufficient to establish an industry-wide educational requirement.

The petitioner also has not established that the proffered position qualifies under the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Under this provision, instead of establishing an industry-wide degree requirement for the proffered position, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty. The record contains no evidence to this effect. The position here is too vaguely described to establish that it is above the financial clerk echelon of accounting positions. Moreover, this criterion is inconsistent with the fact that the petitioner is willing to hire a person with a generalized baccalaureate degree in business or commerce without a concentration in a business specialty.

Next, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which is relevant to situations where the petitioner establishes that, because of the performance demands of the proffered position, it normally requires a bachelor's degree or its equivalent in a specific specialty. Here the petitioner presented no more than a foreign bachelor's degree transcript pertaining to only one employee, who is described as a former accountant. This is not sufficient to demonstrate an established course of hiring, or, for that matter that the degreed employee held the equivalent of a U.S. bachelor's degree. (See 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(2) and (4), and (D)). Further, contrary to counsel's assertion (at page 3 of his letter of response to the RFE), the transcript shows that this former accountant pursued a course studies not in accounting but in business management.

Finally, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), as the evidence of record has not established that the proposed duties are so specialized and complex as to require knowledge associated with the attainment of a baccalaureate or higher degree in a specific specialty. The record is too limited to generic and abstract descriptions of the proposed duties to establish that any particular body of highly specialized knowledge, and by extension, any baccalaureate degree or equivalent, is essential for job performance. Furthermore, this criterion is inconsistent with the petitioner's acceptance of a generalized baccalaureate degree in business or commerce without a concentration in a business specialty.

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition is denied.